

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

In re

KINGSPORT FOUNDRY &
MANUFACTURING CORPORATION,

Debtor.

No. 02-22881
Chapter 11

M E M O R A N D U M

APPEARANCES:

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MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE

This chapter 11 case is before the court on the debtor's motion to modify its confirmed plan or to reconsider the confirmation order. Having discovered that the lien interest of a secured creditor is not perfected, the debtor desires to change the creditor's treatment under the confirmed plan from that of a secured to an unsecured creditor. For the reasons discussed below, including the debtor's concession that the confirmed plan has been substantially consummated and this court's conclusion that neither Fed. R. Bankr. P. 60(b) nor 11 U.S.C. § 105(a) provides any basis for relief, the debtor's motion will be denied. This is a core proceeding. *See* 28 U.S.C. § 157(b)(2)(L).

I.

The debtor Kingsport Foundry and Manufacturing Corporation filed for bankruptcy relief under chapter 11 on August 28, 2002, and its plan of reorganization was confirmed on November 14, 2003. On or about January 1, 2002, prior to the debtor's bankruptcy filing, the debtor executed a deed of trust in favor of Tennessee Association of Business Service Corp. ("TAB") on the debtor's real property located in Sullivan County at 141 Unicoi Street, Kingsport, Tennessee ("Kingsport Property"), in order to secure the debtor's promissory note to TAB in the original amount of \$259,516.12. This deed of trust was not recorded in the register of deeds office in Sullivan County or in any county in Tennessee.¹

In its bankruptcy case, the debtor listed TAB as a secured creditor with a lien on the Kingsport Property. The claim was scheduled as undisputed, non-contingent, and liquidated, and TAB did not file a proof of claim or otherwise make an appearance in the case prior to confirmation of the plan. The

¹These facts and those set forth in the subsequent paragraphs are taken from the parties' stipulations filed December 23, 2004.

debtor's disclosure statement and plan indicate that TAB holds a second lien on the Kingsport Property subject to a first lien held by AmSouth Bank, that TAB holds a Class III secured claim, and that Class III secured claims are unimpaired. The debtor's plan provides for three stages of implementation: in Stage I, the debtor would turn raw inventory and work in process into final product and collect accounts receivable; in Stage II, beginning December 1, 2003, and continuing for four months, the debtor would continue to collect accounts receivable but also liquidate its inventory and equipment; and finally in Stage III, the debtor would attempt for six months to sell its real estate through a broker, with any property remaining at the end of the six-month period to be sold at auction. The plan provides that the price and terms for each sale of real property will be that agreed upon by the debtor and the respective lien holders.

The plan's effective date was December 15, 2003. Since that time, the debtor has fully completed the first two stages of the plan. As to Stage III, the debtor marketed its real property for six months and then held an auction on June 22, 2004, at which all of the debtor's remaining personal and real property was sold, with the exception of the Kingsport Property. Following the auction, debtor's real estate counsel conducted a title search on the Kingsport Property and discovered that TAB did not have a recorded deed of trust.

On November 10, 2004, the debtor filed the "motion to reconsider confirmation order or modify plan," which is presently before this court. In the motion, the debtor recites that it has found a buyer for the Kingsport Property at a purchase price of \$300,000, that the proposed sale has been approved by the unsecured creditors' committee in this case (the "Committee"), and that TAB's lien on the property has never been perfected. The debtor notes that it has the status of a judicial lien creditor or bona fide purchaser and that under Tennessee law, trust deeds not "proved, or acknowledged and registered, or

noted for registration, shall be null and void as to existing or subsequent creditors of, or bona fide purchasers from, the makers without notice,” citing *Tenn. Code Ann.* § 66-26-103. Accordingly, based on the premise that modification is possible under 11 U.S.C. § 1127(b) because the plan has not been substantially consummated, as defined by 11 U.S.C. § 1101(2), the debtor asks that its plan be modified to change TAB from a Class III secured creditor to a Class IV unsecured creditor. Alternatively, the debtor requests that this modification be achieved through a reconsideration of the confirmation order pursuant to Fed. R. Bankr. P. 3020(d)² and 9024.

Not surprisingly, TAB objects to the debtor’s motion. TAB asserts that the debtor’s plan cannot be modified because it has already been substantially consummated. TAB additionally argues that even if substantial consummation has not occurred, the debtor’s motion lacks merit because: “(1) any modification is futile since the avoidance and claims deadlines have run, (2) the plan is *res judicata* on the claims of [TAB] and Debtor, (3) Debtor is bound by judicial estoppel and a post-confirmation agreement which preclude it from taking the position that [TAB] is unsecured, (4) Debtor can only obtain the relief it truly seeks through an adversary proceeding, and (5) Debtor has unclean hands.” On the other hand, the debtor’s motion is supported by the Committee. In a response filed December 1, 2004, the Committee asserts that the court “should determine the extent, validity and priority of TAB’s claim to determine if it is a creditor of the debtor, and if so, a secured or an unsecured creditor.” The Committee also argues that:

²Although the debtor cites Fed. R. Bankr. P. 3020(d) in its motion as a basis for relief, no reference to the rule is set forth in the debtor’s memorandum of law. Rule 3020(d) provides: “Notwithstanding the entry of the order of confirmation, the court may issue any other order necessary to administer the estate.” While Rule 3020(d) is a general recognition of the court’s continued authority in a case post-confirmation, it provides no specific support for the debtor’s current motion, which as discussed hereafter, is controlled by § 1127(b) of the Bankruptcy Code.

It would be an injustice to other creditors to allow TAB to attempt to elevate its alleged claim to a secured claim when it never perfected its lien as to the debtor and the debtor mistakenly assumed TAB was a secured creditor. Pursuant to 11 U.S.C. § 105, the Court may enter Orders that are necessary or appropriate to carry out the provisions of the Bankruptcy Code. Based on the facts in this matter, if TAB is entitled to a claim, its claim is an unsecured claim.

Notwithstanding the parties' dispute as to TAB's lien status, they all agreed that the debtor's proposed sale of the Kingsport Property would be appropriate. Accordingly, on November 24, 2004, this court entered an agreed order allowing the sale to go forward, free and clear of TAB's lien interest, with any such interest attaching to the sale proceeds. In this regard it should be noted that AmSouth Bank, the first lien holder on the Kingsport Property, has been paid in full from other collateral. As of October 1, 2004, TAB's debt was \$166,253.36 plus interest and attorney's fees.

In addition to the stipulations of fact filed by the parties, all have now filed memoranda of law in support of their respective arguments. At the January 25, 2005 hearing on the debtor's motion to modify or reconsider, counsel for the debtor conceded, contrary to the debtor's assertion in the motion, that the debtor's confirmed plan has been substantially consummated. Counsel for the parties also announced that they believed that there were no material facts in dispute and that the debtor's motion turned on questions of law. In light of the debtor's concession as to the plan's consummation, *see In re H & L Developers, Inc.*, 178 B.R. 77 (Bankr. E.D. Pa. 1994)(Whether a plan has been substantially consummated, barring modification of plan, is a question of fact to be determined upon circumstances of each case and evidence provided by parties.), this court agrees.

II.

“Section 1127(b) of the Bankruptcy Code details the circumstances and procedures under which a plan of reorganization can be modified after confirmation.” *Terex Corp. v. Metropolitan Life Ins. Co.* (*In re Terex Corp.*), 984 F.2d 170, 173 (6th Cir. 1993). According to this provision, “The proponent of a plan or the reorganized debtor may modify such plan at any time after confirmation of such plan and *before substantial consummation of such plan*” 11 U.S.C. § 1127(b)(emphasis supplied). The overwhelming majority of courts agree that once a plan has been substantially consummated, it may no longer be modified. *See, e.g., 1st Franklin Fin. Corp. v. Barkley (In re Anthony)*, 302 B.R. 843 (Bankr. N.D. Miss. 2003)(Chapter 11 plan cannot be modified after it has been substantially consummated.); *In re Rickel & Assocs., Inc.*, 260 B.R. 673, 677 (Bankr. S.D.N.Y. 2001)(“[T]he literal terms of § 1127(b) bar any effort to modify [a substantially consummated] Plan”); *In re AT of Maine, Inc.*, 56 B.R. 55 (Bankr. D. Me. 1985)(Under § 1127(b), chapter 11 debtor is prohibited from modifying confirmed plan because plan has been substantially consummated within meaning of § 1101(2).); *but see United States v. Bullion Hollow Enters., Inc. (In re Bullion Hollow Enters., Inc.)*, 185 B.R. 726, 730 (W.D. Va. 1995) (“Modification of a substantially consummated plan can be approved if it was filed ‘in good faith and as a result of unforeseen changed circumstances.’”).

In apparent recognition of this obstacle, the debtor seeks not to modify its plan but the order confirming the plan, pursuant to Rule 60(b) of the Federal Rules of Civil Procedure as incorporated by Fed. R. Bankr. P. 9024, which provides for relief from a judgment or order for “mistake, inadvertence, surprise, or excusable neglect ... or ... any other reason justifying relief from the operation of the judgment.” According to the debtor, “mistake” exists in this case because the debtor, in drafting the plan, operated

under the mistaken belief that TAB's lien was perfected. In support of this proposition, the debtor cites the case of *In re Midlands Utility, Inc.*, 251 B.R. 296 (Bankr. D. S.C. 2000), wherein the court held that Rule 60(b) may be utilized to circumvent the requirements of § 1127(b).

In response to this argument, TAB asserts that Rule 60 is a "red herring." According to TAB, modification in this manner would permit an end run around § 1127, "which, as the specific provision addressing plan modifications, governs over Rule 60's more general application." TAB asserts that *Midlands* was wrongly decided and notes that the court in *In re Rickel & Associates* reached a contrary result. Finally, TAB asserts that even if this court concludes that Rule 60 is available, it provides no assistance to the debtor herein because the confirmed plan rather than the confirmation order provides for the treatment of TAB's claim.

This court agrees that Rule 60 provides no basis for the relief requested by the debtor and that *Rickel* correctly states the law in this area. As the *Rickel* court stated:

A debtor cannot circumvent § 1127(b) and change the plan simply by calling its request a motion to modify the confirmation order, *In re Charterhouse, Inc.*, 84 B.R. at 150, or a plan-related document, *Findley v. Blinken (In re Joint E. & S. Dist. Asbestos Litig.)*, 982 F.2d 721, 748 (2d Cir.1992)(statutory limitations on modifying a substantially consummated plan cannot be circumvented by modifying a plan-related document) or another application that nonetheless affects rights under the plan. See *In re United States Brass Corp.*, 255 B.R. 189, 194 (Bankr. E.D. Tex. 2000)(modification of a substantially consummated plan will not be allowed regardless of the attempt to clothe the motion as a settlement or clarification of an order); *In re U.S. Repeating Arms Co.*, 98 B.R. at 140 ("Trustee may not eliminate procedural safeguards by labeling a plan modification as a claim classification"). Here, the only proposed change to the Confirmation Order involves the treatment accorded to Class 6 under the Plan. Regardless of what the debtor chooses to call it, the motion is one to modify the Plan, and is subject to § 1127(b).

....

While a court can modify a confirmation order under Rule 60(b), see *In re 401 East 89th*

Street Owners, Inc., 223 B.R. 75, 79 (Bankr. S.D.N.Y. 1998); 8 COLLIER ¶ 1144.07, at 1144-13, the Rules cannot provide a remedy that the Bankruptcy Code has substantively foreclosed. *In re Fesq*, 153 F.3d 113, 116 (3d Cir.1998), *cert. denied*, 526 U.S. 1018, 119 S. Ct. 1253, 143 L .Ed.2d 350 (1999). Hence, Rule 60(b) cannot be invoked to bypass § 1127(b). *Cf. In re Newport Harbor Assocs.*, 589 F.2d 20, 23 (1st Cir.1978)(debtors cannot circumvent six month statute of limitations governing revocation of Chapter XI plan through invocation of court's general equitable powers or Fed. R. Civ. P. 60(b)).

In re Rickel & Assocs., Inc., 260 B.R. at 677-78.

The *Rickel* court considered and rejected the conclusions of the *Midlands* court, finding its authorities distinguishable and unconvincing and its research faulty. While this court finds it unnecessary to set forth in its entirety the *Rickel* court's well-reasoned discussion, a couple of points made by *Rickel* are worth repeating. First, the court in *Rickel* refuted, by reference to specific case citation, *Midlands*' observation that there is no case authority prohibiting the use of Rule 60 to bypass §1127(b). *Id.* And, equally important to the *Rickel* court, was that "no court [presumably with the exception of *Midlands*³] has ever relied on Rule 60(b) to modify a plan after substantial consummation." *Id.* at 680 (citing *In re Joint E. & S. Dist. Asbestos Litig.*, 982 F.2d 721, 748 (2d Cir. 1992)(lower court lacked basis to conclude that § 1127(b) did not bar modification of plan-related document after substantial consummation simply because no cases had been found that applied § 1127(b) to bar such modification; it was equally true that no cases had ever permitted the modification of a plan-related document without regard to § 1127(b)).

³It is unclear from the *Midlands* decision whether the debtor was actually able to modify its plan in contravention of § 1127(b). The issue in *Midlands* was whether to grant the chapter 11 debtor's request that it be allowed to reopen its bankruptcy case in order to pursue relief from certain plan terms set forth in an attachment to the confirmation order. Concluding that Rule 60(b) may provide a debtor with relief, the court granted the motion to reopen for the purpose of conducting a hearing on the issue of whether modification was warranted. *In re Midlands Utility, Inc.*, 251 B.R. at 302. Subsequent proceedings in that case are not reported.

Rickel also addressed another argument made by the debtor and the Committee in the present case, that notwithstanding § 1127(b), a court can authorize modification of a plan pursuant to its inherent powers of equity or its statutory authority under § 105(a) of the Bankruptcy Code. *See In re Rickel & Assocs., Inc.*, 260 B.R. at 678; 11 U.S.C. § 105(a) (“The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”). Applying the principle that “[a] bankruptcy court cannot exercise its equitable powers outside of the confines of the Bankruptcy Code, or disregard its specific commands,” the bankruptcy court in *Rickel* concluded that a court “cannot modify a plan under § 105(a), and produce a result at odds with the specific provisions of § 1127(b).” *Id.* at 678 (citing, e.g., *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988) (Whatever equitable powers remain in bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code.)).

Again, this court finds itself in full agreement with *Rickel*. The Sixth Circuit Court of Appeals, albeit in different contexts, has on numerous occasions cautioned that a bankruptcy court’s equitable powers, whether arising inherently or pursuant to § 105, are constrained by more specific Code provisions or other statutory authority. For example, in a decision from last year, the court held that the bankruptcy court impermissibly used its equitable authority under § 105 to discharge a debtor’s student loan. *See Miller v. Penn. Higher Ed. Assistance Agency (In re Miller)*, 377 F.3d 616, 624 (6th Cir. 2004). As stated by the court therein: “Section 523(a)(8) permits the discharge of student loans only upon a finding that denying such discharge would impose undue hardship on the debtor. 11 U.S.C. § 523(a)(8). Relying on § 105 to discharge student loan indebtedness for reasons other than undue hardship impermissibly contravenes the express language of the bankruptcy code.” *Id.* at 624 (citing *Ray v. City Bank & Trust Co. (In re C-L*

Cartage Co.), 899 F.2d 1490, 1494 (6th Cir.1990) (“Bankruptcy courts ... cannot use equitable principles to disregard unambiguous statutory language.”)). *See also Rice v. United States (In re Rice)*, 78 F.3d 1144, 1151 (6th Cir. 1996)(While 11 U.S.C. § 105(a) gives bankruptcy courts certain equitable powers, “those powers must be exercised within the confines of, or consistent with, the Bankruptcy Code.”); *Granger Garage, Inc. v. Wasserman (In re Granger Garage, Inc.)*, 921 F.2d 74, 77-8 (6th Cir. 1990)(“A bankruptcy court does not have unfettered equity powers.”). Modification of the debtor’s substantially consummated plan in the instant case in contravention of § 1127(b) exceeds whatever equitable powers this court possesses. Accordingly, the court has no statutory or equitable authority to grant the debtor’s motion.

III.

Even assuming that modification would not be foreclosed by § 1127(b), the debtor’s modification request is fundamentally flawed. As previously noted, the debtor contends that TAB’s unperfected lien was extinguished automatically upon the debtor’s bankruptcy filing because the debtor possesses the status and powers of a judicial lien creditor or bona fide purchaser. This argument is premised on the following statutes: 11 U.S.C. § 1107(a) which gives a debtor in possession “all the rights ... and powers ... of a trustee” ; 11 U.S.C. § 544(a)(1) which states that “the trustee shall have, as of the commencement of the case ... the rights and powers of, or may void any transfer of property of the debtor ... that is voidable by [a judicial lien creditor] ... or ... bona fide purchaser of real property”; and *Tenn. Code Ann.* § 66-26-103 which provides that an unregistered deed of trust is “null and void as to existing or subsequent creditors of, or bona fide purchasers from the makers without notice.” In making this assertion, the debtor correctly

notes that federal law, *i.e.*, 11 U.S.C. § 544(a), gives a trustee the status of a judicial lien creditor, but applicable state law determines what powers that status confers. *See Midlantic Nat'l Bank v. Bridge (In re Bridge)*, 18 F.3d 195, 200 (3rd Cir. 1994).

TAB's response to this argument is that avoidance of its unperfected lien is not automatic, that its lien may be avoided only through an adversary proceeding, and that any avoidance action is now barred by the expiration of the statute of limitations set forth in 11 U.S.C. § 546 ("An action or proceeding under section 544 ... may not be commenced after ... 2 years after the entry of the order for relief"). TAB maintains that absent the exercise of the debtor's avoidance powers within § 546's limitations period, the unrecorded lien is effective between it and the debtor, citing *Tenn. Code Ann.* § 66-26-101 (Unregistered instruments "shall have effect between the parties to the same, and their heirs and representatives, without registration") and *Edmondson v. Frasier (In re Frasier)*, 47 B.R. 864, 866 (Bankr. M.D. Tenn. 1985)(chapter 7 trustee could not avoid effect of unrecorded decree absent compliance with two-year statute of limitations). It is undisputed that other than the filing of the current motion, the debtor has taken no action to avoid TAB's deed of trust and that the current motion was filed more than two years after the commencement of this bankruptcy case.

The debtor and the Committee counter that no avoidance action is necessary. They emphasize that § 544(a) not only permits avoidance actions by a trustee, but also vests the trustee with the "rights and powers" of a judicial lien creditor or bona fide purchaser under state law. According to their reasoning, § 546's statute of limitations only applies to avoidance actions under § 544, not to § 544's rights and powers provision which goes into effect automatically upon the filing of a case. And, the argument continues, because TAB's lien was null and void under state law, the Kingsport Property became property

of the estate free and clear of TAB's lien when the bankruptcy case was filed, pursuant to the debtor's judicial lien creditor and bona fide purchaser status.

While this argument has superficial appeal, a more thorough examination reveals its flaws. As TAB has indicated, a similar argument was raised and rejected in *Frasier*. In that decision, the chapter 7 trustee filed a "complaint to determine the trustee's ownership in real property," asserting that an unrecorded divorce decree conveying certain realty to the debtor's ex-wife was "null and void" under *Tenn. Code Ann.* § 66-26-103, and therefore, the trustee held an undivided one-half interest as a tenant-in-common in the property. *In re Frasier*, 47 B.R. at 865-66. In response to the contention that no avoidance action had been brought within the time period prescribed by § 546, the trustee argued that he was not relying on any avoidance power and need not use one because the decree had never been recorded. *Id.* at 866.

The court, speaking through Bankruptcy Judge Keith M. Lundin, rejected this assertion:

[T]he trustee's only vehicle to deny the effect of the divorce decree, valid between the parties, is to assert his special powers under § 544. The property interest claimed by the trustee can only be established by a successful avoidance action. *See* 11 U.S.C. § 551 (when transfer is avoided under § 544, property is preserved for the benefit of the estate). Unfortunately for the trustee, § 546 prescribes a specific time limitation within which such an action must be brought.

Id.

As explained in greater detail in a footnote, the court indicated that because the divorce decree need not be registered or recorded in order to be fully effective between the parties, *see Tenn. Code Ann.* § 66-26-101, the divorce decree was legally enforceable by the ex-wife against the debtor. *Id.* n.4. Upon the debtor's bankruptcy filing, the trustee acquired only bare legal title to the real estate pursuant to § 541; the bankruptcy estate did not include the wife's equitable interest in the realty which had been granted to

her in the divorce decree. *Id.* “To realize the rights the trustee asserts in this action (*i.e.*, status as a full tenant-in-common), the trustee must avoid the effect of the unrecorded divorce decree, here by exercise of his powers under § 544. The Bankruptcy Code provides a statute of limitations for such actions.” *Id.*

Courts from other jurisdictions construing similar state “void” statutes have reached the same result. In *Murphy v. Wray (In re Wray)*, 258 B.R. 777 (Bankr. D. Idaho 2001), the chapter 7 trustee sought a declaratory judgment that certain property of the bankruptcy estate was free of an unrecorded life estate allegedly void under Oregon law. *Id.* at 789. The trustee argued that the statute of limitations in 11 U.S.C. § 546 did not apply because the adversary proceeding was not an avoidance action and there was nothing to avoid. *Id.* at 784. The bankruptcy court rejected this argument, noting that the trustee’s standing to make the assertion that the life estate was void was derived solely from § 544, which by its terms is subject to § 546’s statute of limitation. *Id.* at 785. *See also Nat’l Am. Ins. Co. v. Ruppert Landscape Co.*, 122 F. Supp. 2d 670 (E.D. Va. 2000) (Bankruptcy trustee’s right to set aside fraudulent conveyance under trustee’s strong-arm powers of § 544(b) based on Virginia state statute providing that “[e]very gift, conveyance, assignment or transfer ... given with intent to delay, hinder, or defraud creditors, purchasers ... shall, as to such creditors, purchasers ... be void,” is subject to time limitations of § 546(a).).

This court agrees with the conclusions of these courts. Even though state law may declare an unrecorded instrument void as to a judicial lien creditor or bona fide purchaser, it is § 544 of the Bankruptcy Code which gives the trustee/debtor in possession the authority to exercise the rights and powers of these entities. Any exercise of § 544 authority is subject to the time constraints of § 546. Thus, even assuming that the debtor would otherwise be able to modify its plan or confirmation order, any attempt to avoid or set aside TAB’s unrecorded deed of trust is precluded by the expiration of the statute of

limitation set forth in § 546.

Perhaps anticipating this holding, the Committee raises equitable tolling, asserting that even if an avoidance action is necessary, the two-year limitation period of § 546 should be equitably tolled because the debtor did not learn of the lien's unperfected status until after the limitations period has run. In this same vein, the debtor espouses the doctrine of judicial estoppel, based on the assertion that the debtor and TAB were not aware that TAB's mortgage had not been recorded until approximately two years after the debtor's bankruptcy filing. Neither of these theories offer any support to the debtor's motion to modify its plan or confirmation order. "Typically, equitable tolling applies only when a litigant's failure to meet a legally-mandated deadline unavoidably arose from circumstances beyond that litigant's control." *Graham-Humphreys v. Memphis Brooks Museum of Art, Inc.*, 209 F.3d 552, 560-61 (6th Cir. 2000). At the hearing in this matter, counsel for the debtor conceded that nothing prevented the debtor from having conducted a title search of the Kingsport Property and learning of TAB's failure to record its deed of trust prior to the entry of the confirmation order and prior to the running of the avoidance statute of limitations. As to the judicial estoppel argument, this doctrine bars a party from "asserting a position that is contrary to one that the party has asserted under oath in a prior proceeding, where ... the prior court adopted the contrary position 'either as a preliminary matter or as part of a final disposition.'" *Browning v. Levy*, 283 F.3d 761, 775 (6th Cir. 2002)(quoting *Teledyne Indus., Inc. v. NLRB*, 911 F.2d 1214, 1218 (6th Cir. 1990)). There is no evidence or even any assertion in the present case that TAB made any statement under oath and is now attempting to "play fast and loose with the courts" by offering a contrary position. Furthermore, "judicial estoppel is inappropriate in cases of conduct amounting to nothing more than mistake or inadvertence." *Id.* at 776. Accordingly, these arguments are similarly without merit.

IV.

Based on the foregoing, the court will enter an order denying the debtor's motion to reconsider confirmation order or modify plan.

FILED: February 9, 2005

BY THE COURT

/s/

MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE